IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3790 OF 2005

Sou.Bebitai Ramling Deshmukh
& Or. ..Applicants

Vs.

Shri.Karmayogi S.R.
and Anr. ..Respondents

....
Mr.Amit Shete for Applicants
Mr.Rajesh More, A.P.P. for Respondent-State
....

CORAM: SMT. V.K. TAHILRAMANI, J.
DATE OF RESERVING THE ORDER : 25.08.2005
DATE OF PRONOUNCING THE ORDER : 09.09.2005

P.C.

1. Heard the learned advocate for the applicants and learned A.P.P. for the State.

2. The applicants i.e. original accused nos. 2 and 3 have prayed for quashing of process issued against them under Section 138 of Negotiable Instruments Act. The said process has been issued in STC No. 1491 of 2004 which is pending before

the learned J.M.F.C. Pandharpur.

3. Mr.Shete the learned advocate for the applicants submitted that there is nothing in the complaint to show that the applicants can be held liable under Section 138 of Negotiable Instruments Act. However, I find this submission to be incorrect as in the complaint, it is very clearly stated that the present applicants had given the cheque in question to the complainant. The applicants are the office bearers of the Savitribai Phule Maharashtra Sahkari Society. They are the Directors of the said society. The applicant no.1 is the Chairman of the said Society and applicant no.2 is the Secretary of the said Society. It is clearly stated in the said complaint that the present applicants gave the cheque to the complainant in their capacity as office bearers of accused no.1 Society. Thus, it cannot be said that there is no material in the complaint in respect of the present applicants.

4. The second submission of Mr.Shete is that there is no material to show that the present applicants

were under any legal liability in respect of the amount of the cheque. It is submitted that cheque was not drawn in respect of any debt or any liability and thus, the applicants cannot be held liable under Section 138 of Negotiable Instruments Act. In this connection, it would be pertinent to refer to the decision of the Supreme Court in the case of **A.V.Murty Vs. P.S.Nagabasabanna [(2002) Cri.L.J. 1479]**. The Supreme Court has observed in the said case that question whether the cheque drawn was in respect of debt or liability which was not legally enforceable, is mixed question of law and fact and cannot be gone into at the initial stage but trial would be necessary in respect of this issue. Thus, I am not inclined to quash the process on the basis of this submission.

5. The next contention raised by the learned advocate for the applicants is that the cheque in question was issued on 18.1.2004 and it came to be dishonoured on 9.2.2004 whereas the applicant no.2 has ceased to be the Director of the Society on 30.4.2003. In support of this contention, he has placed reliance on the copy of Resolution dated

30.4.2003. Thus, he has submitted that at the time when the cause of action arose, the applicant no.2 was not concerned with the accused no.1 and thus he was not incharge or responsible for the conduct of the business of accused no.1-Society.

6. In the case of **Raj Lakshmi Mills V.Shakti Bhakoo reported in (2002) 8 SCC 236,** the High Court had quashed the proceedings on the assumption that "X" was not in charge of or responsible for the conduct of business of the firm. The Supreme Court has observed that "We are of the opinion that at the stage of summoning when evidence was yet to be led by the parties, the High Court could not on an assumption of facts come to a finding of fact that the accused was not responsible for the conduct of the business. On this ground alone, these appeals are allowed and the impugned decision of the High Court is set aside".

7. Moreover, in the case of State of **M.P. Vs. Awadh Kishore Gupta & Ors. reported in (2004) 1 SCC 691,** the Supreme Court has observed that in the matters under Section 482 of Cr.P.C., annexures to

the petition cannot be termed as evidence without being tested and proved and hence, these annexures should not be acted upon by the High Court. So also, in the case of **Chand Dhawan V. Jawaharlal and Ors. reported in (1992) 3 SCC 317**, it has been held by the Supreme Court that the Court should not act on annexures to the petition where the documents are not admitted or accepted by the complainant. In view of the facts of this case and the observations of the Supreme Court in the various decisions cited above, I am of the opinion that no reliance can be placed on the document annexed i.e. Resolution at this stage.

8. In this view of the matter, I find no merit in the application and the application is rejected.

[SMT.V.K.TAHILRAMANI,J.]